CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No-2962/2013

Order Reserved on 27.08.2015
Order Pronounced on: 27.11.2015

Hon'ble Mr. Sudhir Kumar, Member (A)
Hon'ble Mr. Raj Vir Sharma, Member (J)

Ajay Kumar Pandey,
s/o Shri Mani Raj Pandey,
R/o RZ/136, Street No. 1-C,
Shivpuri, West Sagarpur,
New Delhi-110046. -Applicant

(By Advocate: Shri M.S. Saini)

Versus

1. New Delhi Municipal Council,
Through its Chairperson,
Palika Kendra,
New Delhi-110001.

2. Secretary,
New Delhi Municipal Council,
Palika Kendra,
New Delhi-110001.

3. Director/Personnel,
New Delhi Municipal Council,
Palika Kendra,
New Delhi-110001.

4. Director (Welfare),
New Delhi Municipal Council,
Palika Kendra,
New Delhi-110001. -Respondents

(By Advocate: Shri Rajeev Kumar)

O R D E R

Per Sudhir Kumar, Member (A):

This is the second round of consideration of the facts of this case. The OA had earlier been heard and reserved for orders on 15.12.2014, which orders were pronounced on 23.12.2014 dismissing the OA as being barred by limitation. Thereafter the applicant had filed a Review Application No.25/2015 giving detailed grounds as to why his application should not have been dismissed on the point of limitation. That Review Application was heard by the same Bench which shall earlier heard the OA, and came to be allowed on 06.07.2015, recalling the order dated 23.12.2014 earlier passed dismissing the present OA. Thereafter, the case was heard in the second round and came to be reserved for orders. With benefit, we may borrow the facts of the case of this OA, as described in the earlier order pronounced on 23.12.2014, which has been recalled, as follows:-

> "The facts of the case as captioned in the Original Application are that the applicant joined New Delhi Municipal Council (NDMC) as Temporary Muster Roll (TMR) employee in the year 1997 and having rendered the requisite length of service acquired the status as Regular Muster Roll (RMR) employee. Subsequently, in terms of order dated 7.3.2006 his status was again reversed to that of TMR, thus the applicant filed W.P. (C) No.3990/2006 before the Hon'ble High Court to impugn are the said order. As a result of outcome of the Writ Petition (C) the order dated 7.3.2006 was withdrawn and a notice calling upon the applicant to show cause was his status should not be reversed to that of TMR was issued. Finally, in terms of the order dated 7.8.2006, the RMR status conferred upon the applicant was withdrawn. To assail the order, the applicant again approached the Hon'ble High Court of Delhi by way of W.P. (C) No.17291/2006. The writ petition was transferred to this Tribunal and was registered as T.A. No.427/2009, which was disposed of in terms of the Order dated 30.4.2009, relevant excerpt of which reads thus:-

"12. If such an interpretation is given, that the opportunities dried up altogether after 26.2.2002, that would have been hostile discrimination. The date 31.12.1998 is not assigned any sanctity. The earlier resolution prohibited induction of fresh TRM workers. We are to hold that that by itself showed that TRM workers as on the rolls on 18.3.1999, could have continued as TRM. There was no special Resolution to the effect that they would become disentitled to the benefits of ultimate regularization as was being extended to their senior colleagues. We agree that of course, the Council was within powers to hold that after a cut off date there will be no engagement of TRM. But that is totally different from raising a contention that TRM workers already on the rolls would have to forgo benefits, which were being conferred on such category of persons, historically.

13. We may look into the matter from yet another perspective. Resolution dated 26.5.2002 could have been only prospectively applied. After 18.3.1999 the applicant had continued uninterruptedly and had completed 500 days of service by 1999. On that day there was no decision, which would have aversely stood against his rights to get RMR status. It is settled law that executive orders, by a statutory body cannot take away right of a party from a retrospective date. Nor can it make inroads into the accrued right of individuals, especially in the matter of service. Therefore, the contention of the applicant that there is non- application of mind in dealing with his case by reducing him to TMR from RMR status appears to be substantiated.

14. One other circumstance also appears relevant to us. Respondents have pleaded that RMR status had been given to applicant by a mistake. This does not appear to be all too valid when we closely examine the order. Annexure P-II specifically refers to the circumstance in which it came into existence. Council had passed Resolution No. 13 (H-21) dated 21.1.2004 deciding to confer the benefit, defining the cut off date as 31.12.2000 for completion of 500 days of engagement. Thereafter with the prior approval of the Chairperson, TRM workers of Civil Engg. Deptt. who had completed 500 days of service as on 31.12.2000 were taken on RMR as Beldar Group D. This is completely in line with the Resolution of 2002, the only situation being that by the above resolution persons who had completed 500 days by 31.12.1998 had been extended the benefit of RMR status. All such persons had come to the rolls before 18.3.1999, the supervening prohibitory

date. As a matter of course, fresh Resolution was passed by the Council and approved by Chairperson, to ensure that benefits needed to be extended to those persons who stood next in the line namely those persons who had completed 500 days of service as on 31.12.2000. We cannot find any mistake or irregularity in the approach and in fact it is just and equitable and as expected of a public authority. It would have been unethetical for the respondents to disown service of TRM staff who came to be engaged before the crucial date of Annexure A-5 Resolution namely, 18.3.1999.

15. The impugned order hardly examine the relevant aspects and tends to be arbitrary, and issued on misconceived notions. The submissions made by the applicant that it has been issued mechanically is per se evident. In the result we allow the Application. In line with the orders passed by the High Court in WP (C) 3990/2006 we declare that applicant will be entitled to continue to get the benefits of Annexure P-II. He will be entitled to gain back the benefit of RMR status, as had been conferred. The consequential benefits of regularization after a period of six years, viz from 31.12.2006 also cannot be denied to him. He will be regularized in service subject to his fitness and suitability.

16. The applicant has been subjected to unnecessary hardship and prejudice. Due attention expected from the respondents vis-a- vis his grievance had not forthcome. In the circumstances, we direct that follow up orders should be passed in consonance with our declaration as above and monetary benefits that might be admissible should also be made available to applicant without further delay. We set the dead line for implementation as 30.6.2009. There will be no order as to costs."

2. In implementation of the said Order, the respondents regularized the services of the applicant as Beldar (Group D) w.e.f. 2.1.2007 subject to his fitness and suitability. The applicant has filed the present Original Application seeking issuance of direction to the respondents to give him consequential benefits of regularization for the period from 2.1.2007 to 16.3.2010.

3. Mr. M.S. Saini, learned counsel for applicant contended that when the applicant was willing to work but was prevented by the respondents to do so, the benefit of regular salary cannot

be denied to him. To buttress his argument, he relied upon the following judgments of Honble High Courts of Delhi and Punjab & Haryana and Honble Supreme Court:

Hon'ble High Court of Delhi

i) Union of India & others v. Sh. Ashok Kumar (W.P. (C) No.13012/2009) decided on 27.1.2010, Hon'ble High Court of Punjab & Haryana

ii) Rameshwar v. State of Haryana & others, 2006 (1) SLR 208,

iii) Kanwaljeet Singh v. State of Haryana others, 2008 (4) Service Cases Today 326. Hon'ble Supreme Court

iv) Union of India & others v. K. V. Jankiraman & others, (1993) 23 ATC 322,

v) The Commissioner, Karnataka Housing Board v. C. Muddaiah, JT 2007 (10) SC 609,

vi) State of Kerala & others v. E.K. Bhaskaran Pillai, JT 2007 (6) SC 83.

4. In the counter reply filed on behalf of the respondents, it has been forcefully espoused that the Original Application is barred by limitation. Relevant excerpt of the reply in this regard reads thus:-

"1. The Original Application of the Applicant is barred by the Principle of limitation because Applicant is claiming the monetary benefits of regularization for the period from 02.01.2007 to 16.03.2010 from January 2007. As per the Judgment of Apex Court in the matter of State of Karnataka & Ors Vs S.M. Katrayya & Ors (1996) 6 SCC 267, in Para-9 held that

"Thus considered, we hold that it is not necessary that the respondents should give an explanation for the delay which occasioned for the period mentioned in sub-sections (1) or (2) of Section 21, but they should give explanation for the delay which occasioned after the expiry of the aforesaid respective period applicable to the appropriate case and the Tribunal should be required to be satisfy itself whether the explanation offered was proper explanation. In this case, the explanation offered was

that they came to know of the relief granted by the Tribunal in August 1989 and that they filed the petition immediately thereafter. That is not a proper explanation at all. What was required of them to explain under sub-sections (1) and (2) was as to why they could not avail of the remedy of redressal of their grievance before the expiry of the period prescribed under sub-section (1) or (2). That was not the explanation given. Therefore, the Tribunal is wholly unjustified in condoning the delay".

2. That the Honble Apex Court in the case of UOI vs M.K. Sarkar, (2010) 2 SCC 59, Para 15 held that "when a belated representation in regard to a "stale" or "dead" issue/dispute in considered and decided, in compliance with a direction by the Court/Tribunal to do so, the date of such decision can not be considered as furnishing a fresh cause of action for reviving the dead issue or time barred dispute."

3. That the Hon'ble Apex court in the matter of Sethi Auto Service Station & Anr. Vs Delhi Development Authority & Ors, 2009 (1) SCC 180, in Para 14 held that "Nothing in file culminate into an executive order, affecting the rights of the parties, only when it reaches the final decision making authority in the department, get his approval and the final order is communicated to the person concerned. Therefore the Applicant can not relay upon the noting, for claiming any benefit, from the Respondent."

5. The further stand taken by the respondents in the reply is that all the benefits admissible to the applicant in accordance with the Rules have already been released to him. According to them, they have also regularized the intervening period as extra-ordinary leave".

2. We may further note here itself that in reply to Para 4.11 of the OA, the respondents have now stated that the Committee had only given its recommendation, and that recommendation was not a final decision in the matter. The impugned order had thereafter been passed after consideration of the entire case of the applicant, recommendations of the

Committee, submissions and contentions of the applicants, and considering the prevailing laws and procedure.

3. In reply to Para 4.12 of the OA, it has been further submitted that all benefits for which the applicant was eligible for, have already been granted to him, and the Competent Authority has held that no financial benefits can be admissible to the applicant for the period during which he has not worked, though the period was regularized as Extra Ordinary Leave, without pay and allowances through the same order. It was, therefore, submitted that the applicant has already been accorded all the benefits which he was entitled for as per the earlier orders of this Tribunal, and that the impugned order suffers from no infirmity, and requires no interference by this Tribunal.

4. It was further submitted that the judgments as quoted by the applicant are not applicable at all in the facts and circumstances of the present case, and the contentions raised by the applicant in the grounds are ill founded, and not maintainable. The respondents have, therefore, prayed for the OA to be dismissed.

5. While the Coordinate Bench had already recorded the submissions of the applicant as reproduced above, we may only add that both in the OA, as well as in the rejoinder, the applicant has submitted that the order dated 22.03.2010 passed by the Dy. Director/Estt. NDMC is bad to the extent that even though it has regularized his services antedated from 02.01.2007, financial benefits have been denied to him from

02.01.2007 to 16.03.2010, which is unjust, and is in gross violation of the orders of this Tribunal in TA No.427/2009 dated 30.04.2009, already reproduced by the Coordinate Bench in its earlier order as reproduced above. His case is that the Tribunal had very clearly and specifically recorded while deciding his T.A. that he would be entitled to gain back with the benefit of Muster Roll status, as had been conferred upon him, and, therefore, the consequential benefits of regularization after a period of six years w.e.f. 31.12.2006 cannot be denied to him.

6. In the synopsis submitted by the learned counsel for the applicant after the case was heard and reserved for orders, it was again claimed that the applicant had worked in the capacity of Temporary Muster Roll (TMR) employee from 1997 to 2004, and on completion of 500 days service in TMR status upto the year 2000, he was taken on Regular Muster Roll (RMR) as Beldar Group D w.e.f. 18.10.2004 to 07.08.2006, till the date when that RMR status was arbitrarily withdrawn by the respondents with immediate effect. When the applicant challenged that order dated 07.08.2006 by filing a Writ Petition against NDMC, the respondents got infuriated and prejudiced, and did not thereafter engage him even on TMR basis. He has submitted that his numerous visits to the office of the respondents went in vain, and, therefore, it is clear that while the applicant was willing to work, and even offered to work on TMR status itself during the pendency of the Court case, even that request of his was not entertained, due to the resentment shown by the respondents because of his having filed the Writ Petition, later converted into TA before this Tribunal, against the order of withdrawal of his RMR

status. The applicant has further pointed out that even though this Tribunal's order dated 30.04.2009 in that TA was duly approved and adopted by the Council vide Resolution No. 22 (H-04) dated 15.07.2009, but even after that the order of this Tribunal was not complied with in the true letter and spirit.

7. The applicant further cited a portion from the Swamy's Compilation and Commentary on the CCS (CCA) Rules filed by him, which states that when the order of dismissal, removal or compulsory retirement is set aside by a Court of Law/Tribunal on the merits of the case, full pay and allowances are to be allowed to the Government servant, without any reservation, after reinstatement, for the entire period of such absence, including the period of suspension, and the entire period has to be treated as duty for all purposes.

8. Heard. During the arguments, learned counsel for the applicant took us through the relevant potions of the judgments in the case of **State of Kerala & Ors. vs. E.K. Bhaskaran Pillai** (supra), **Rameshwar v. State of Haryana & others** (supra), **The Commissioner, Karnataka Housing Board v. C. Muddaiah** (supra), **Union of India & others v. K. V. Jankiraman & others** (supra).

9. In his arguments, learned counsel for the respondents emphasized on their stand that the applicant had not worked at all in any status whatsoever during the relevant period, after his services had been

downgraded from RMR to TMR, through the orders which were under challenge in his TA No. 427/2009 decided earlier.

10. Having considered the facts of the instant case in great detail, we find that some issues have already been settled by the previous order dated 30.04.2009 passed in the applicant's TA No.427/2009 as follows:-

> "1) That a close reading of the Resolution No. 8/1999 dated 18.03.1999 does not disclose the presence of any such blanket prohibition.
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> 2) That the decision of the council was only to place a total ban on future recruitment of any person in TMR category, and this Resolution could not have affected a person who was already on TMR category.
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> 3) That the decision taken by the counsel on 26.02.2002 was that all the TMR workers who have completed 500 days and above as on 31.12.1998 are to be converted to RMR status.
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> 4) That Resolution did not prescribe that, in future, those persons who were already on TMR rolls are prohibited from being extended the same status as and when they complete the 500 days of service.
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> 5) That such of the persons who had been engaged as TMR before 18.03.1999 could not have been subjected to any differentiation.
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> 6) That an interpretation is given that the opportunities from conversion to TMR status to RMR status dried up all of a sudden on 26.02.2002 would be hostile discrimination.
>
> 7) That there is no sanctity attached to the date 31.12.1998 other than the fact that those who had completed 500 days from that date were to be converted to RMR status.
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> 8) That the TMR workers as on the rolls on 18.03.1999 could not have continued as TMR workers, as there was no such Resolution to the effect that they would

become disentitled to the benefits of ultimate Resolution, as was extended to their senior colleagues.

9) That the counsel was within its powers to hold that after an opportunity a cut off date (31.12.98 as per the Resolution) there will be no fresh engagement of TMR, but this decision is totally different from raising a contention that the TMR workers already on the rolls would have to forgo benefits, which were being conferred on such category of persons, historically.

10) That the Resolution dated 26.05.2002 passed by the Council could have been applied only prospectively.

11) That the applicant had continued for TMR status after 18.03.1999 uninterruptedly, and had completed 500 days of service before the end of that year.

12) That as on that date there was no decision (like the decision of the Council dated 26.02.2002) which could have adversely stood against his rights to get RMR status.

13) That it is settled law that by executive orders, by a statutory body cannot take away right of a party from a retrospective date, nor can it makes inroads into the accrued right of individuals, especially in the matter of service.

14) That the contention of the respondents that RMR status had been given to the applicant by mistake does not appear to be valid.

15) That the council had thereafter passed Resolution No, 13 (H-21) dated 21.01.2004 defining a revised cut off date as 31.12.2000 for conferring the benefit envisaged on completion of 500 days of engagement as TMR workers.

16) That it was on this ground that those TMR workers who had completed 500 days of service as on 31.12.2000 were taken on RMR status as Beldar Group D, which was completely in line with the Resolution dated 26.02.2002.

17) That this did not affect all those who had come on rolls before 18.03.1999, the supervening prohibitory date,

and had been after completion of 500 days by 31.12.2000 extended the benefits of RMR status.

18) That the fresh Resolution was passed by the Council and approved by the Chairperson only to ensure that benefits needed to be extended to those persons who stood next in line and had completed 500 days of TMR service as on 31.12.2000.

19) That this approach is just and equitable and as expected of a public authority, as it would have been otherwise unethical for the respondents to disown the services of TMR staff who came to be engaged before the crucial date of Resolution dated 18.03.1999.

20) That on this finding the applicant was declared to be entitled to continue to get the benefits and to gain back the benefit of RMR status as had been offered upon him.

21) That the consequential benefits of regularization after a period of six years reserved from 31.12.2006, cannot also be denied to him.

22) That it was further ordered that the applicant will be regularized in service subject to his fitness and suitability, and it was directed that orders should be passed in consonance with the declaration as above.

23) That it was further directed that monetary benefits that might be admissible should also be made available to the applicant without further delay."

11. We have also carefully gone through the Office Order passed by the respondents on 08.03.2010, in which the only statement made is that the applicant, who had been granted RMR status on 31.12.2000, is regularized as Beldar (Group 'D') w.e.f. 02.01.2007, subject to his fitness and suitability.

12. That aspect having been noted in the order, this Office Order did not thereafter determine the allowance or disallowance of the financial benefits to the applicant with effect from the date of his regularization, i.e., 02.01.2007. Therefore, we are surprised that even though the correct legal position, as relied upon by the applicant from the Swamy's Compilation produced by him at page-33 of the Paper-Book, had been correctly pointed out in the Office Note, and in the recommendation of the Committee for Redressal of Grievances, and once again in 2013 also through Annexure A-8, it was recommended by the Committee for Redressal of Grievances of the NDMC that monetary benefits including increments etc. as admissible to the applicant from the date of his regularization be paid, keeping his period of absence into consideration, and the seniority be kept intact from the date of regularization, the consequential benefits have not flowed to the applicant.

13. One thing that is clear from the pleadings is that the applicant was not allowed to work on many occasions, and for quite some length of time, in spite of his having reported for work, and having shown his willingness to work.

14. We do not find that in view of the order passed in TA No.427/2009 on 30.04.2009 any fresh issues remained to be determined by us, as we have already reproduced the findings arrived at by the Coordinate Bench that day, which are binding upon both the applicant, as well as the respondents, and also on us, even as on today.

15. Therefore, the OA is allowed partially, and the impugned order dated 22.03.2010 is quashed and set aside to the extent that it denies totally the grant of any financial benefits to the applicant from 02.01.2007 to 16.03.2010.

16. In regard to the prayer as Para 8 (b), we find that we cannot pronounce any fresh judgment, as this prayer of his has already been answered and covered in the order dated 30.04.2009 passed in the applicant's earlier TA No.427/2009.

17. It is trite law, as has been pointed out by the applicant also, that if the applicant had continued to be on the rolls of the respondents in a master-servant relationship, was willing to work, and had reported for duty, and was then denied work by the respondents, he cannot be denied salary for that period, in his capacity as RMR, to which his services now stand regularized antedated from 02.01.2007. Day to day computation of wages can only be made by the respondents in the case of the TMR employees, and not in the case of RMR employees, who acquire a modicum of their service being regular, more so after their regularisation.

18. As a result, the respondents are directed to verify and pass a reasoned and speaking order as to on which dates and for what periods the applicant had voluntarily absented, for which period they would be entitled to either grant him leave, or to treat that period as a period of voluntary absence, leading to sanction of Extra Ordinary Leave, and also determine the dates and periods on which he did report for duty, or had made himself available for duty before the respondents, but had been

denied such engagement on the mistaken assumption that his status stood converted from RMR to TMR, which order regarding change and lowering of his status has already been set aside on 30.04.2009 by a Coordinate Bench while allowing his TA No.427/2009. The respondents shall pass the necessary orders within a period of three months, and grant the monetary benefits as may be admissible to the applicant thereafter, within a period of one month after passing of such speaking order. No costs.

(Raj Vir Sharma)
Member (J)

(Sudhir Kumar)
Member (A)

cc.